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8 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
9 SOUTHERN DIVISION

10 ALLIANCE FOR THE WILD
11 ROCKIES; IDAHO SPORTING
CONGRESS; and NATIVE
12 ECOSYSTEMS COUNCIL,

13 Plaintiffs,

14 v.

15 UNITED STATES FOREST SERVICE;
16 THOMAS TIDWELL, Chief of the Forest
Service; KEITH LANNOM, Forest
17 Supervisor for Payette National Forest;
18 NORA RASURE, Regional Forester for
Region 4 for the U.S. Forest Service,

19 Defendants.

NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

20 I. NATURE OF ACTION

21
22 1. Defendant Keith B. Lannom, the Forest Supervisor for the Payette National Forest in
23 Adams County, Idaho, recently approved the Lost Creek-Boulder Creek Landscape Restoration
24 Project (the "Project"), which will allow, among other things, commercial logging of approximately
25 22,100 acres and non-commercial logging of approximately 17,700 acres in the New Meadows
26 Ranger District of the Payette National Forest.

1 Thus, plaintiffs have complied with the 60 day notice requirement for claims under the ESA and this
2 Court has jurisdiction to review plaintiffs' ESA claims.

3
4 III. VENUE

5 7. Venue is proper in this Court under 28 U.S.C. 1391. All or a substantial part of the
6 events or omissions giving rise to the claims herein occurred within this judicial district, defendants
7 reside in this district, and the public lands and resources and agency records in question are located
8 in this district.

9 IV. PARTIES

10 8. Plaintiff Alliance for the Wild Rockies (the "Alliance") is a tax-exempt, non-profit
11 public interest organization dedicated to the protection and preservation of the native biodiversity of
12 the northern Rockies bio-region; its native plant, fish, and animal life; and its naturally functioning
13 ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000
14 individual members, many of whom are located in Idaho. The Alliance brings this action on its own
15 behalf and on behalf of its adversely affected members.

17 9. Plaintiff Native Ecosystems Council (the "Council") is a non-profit Montana
18 corporation with its principal place of business in Three Forks, Montana. Native Ecosystems
19 Council is dedicated to the conservation of natural resources on public lands in the northern Rockies.
20 Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely
21 affected members.
22

23 10. Plaintiff Idaho Sporting Congress, Inc. is a non-profit conservation organization that
24 works to protect Idaho and the nation's public lands and water through public education and
25 litigation. Idaho Sporting Congress brings this action on its own behalf and on behalf of its
26 adversely affected members.

11. Defendant United States Forest Service is an administrative agency within the U.S. Department of Agriculture and is responsible for the lawful management of our national forests, including the Payette National Forest.

12. Defendant Thomas Tidwell is named in his official capacity as Chief of the Forest Service.

13. Defendant Keith Lannom is named in his official capacity as Forest Supervisor of the Payette National Forest. Defendant Lannom issued the Final Record of Decision for the project in September, 2014.

14. Defendant Nora Rasure is named in her capacity as the Regional Forester for the Intermountain Regional Office, which is Region 4 of the U.S. Forest Service. In that capacity, she is charged with ultimate responsibility for ensuring that decisions made at each national forest in the Intermountain Region, including the Payette National Forest, are consistent with applicable laws, regulations, and official policies and procedures.

V. STATEMENT OF STANDING

15. The interests at stake in this matter are germane to plaintiffs' organizational purposes. The agency's failure to reinitiate consultation pursuant to the ESA threatens the preservation of the native biodiversity of the Payette National Forest and the Project area including its native fish life and its naturally functioning ecosystems. That failure to consult also threatens the conservation of fisheries resources on public lands in the Payette National Forest and the Project area.

16. Plaintiffs and their members observe, enjoy, and appreciate Idaho's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area in the Payette National Forest. Members use and enjoy the waters, public lands,

1 and natural resources throughout areas covered by the Project for work, recreational, scientific,
2 spiritual, educational, aesthetic, and other purposes. Plaintiffs' members enjoy fishing, hiking,
3 camping, hunting, skiing, bird watching, study, contemplation, photography, and other activities in
4 and around the waters and public lands throughout the Project area. Plaintiffs and their members
5 also participate in information gathering and dissemination, education and public outreach,
6 commenting upon proposed agency actions, and other activities relating to the Forest Service's
7 management and administration of these public lands.
8

9 17. Defendants' unlawful actions adversely affect plaintiffs' organizational interests, as
10 well as their members' use and enjoyment of the Payette National Forest, including the Project area.
11 The interests of plaintiffs and their members have been and will continue to be injured and harmed
12 by the Forest Service's actions and/or inactions as complained of herein, including the agencies'
13 failure to consult as required by the ESA. These decisions are particularly and directly harmful in
14 that defendants have failed to perform their duty to ensure through consultation that the Forest Plan
15 and the Project will not result in the destruction or adverse modification of critical habitat for bull
16 trout that was designated on September 30, 2010. Unless the relief prayed for herein is granted,
17 plaintiffs and their members will continue to suffer ongoing and irreparable harm and injury to their
18 interests.
19

20 18. The injuries to plaintiffs are likely to be redressed by a favorable decision of this
21 Court because plaintiffs are seeking an order declaring that defendants have violated the ESA,
22 enjoining the Forest Service from implementation of the Project, and requiring that the agencies
23 reinstitute consultation under the ESA. That would, in turn, ensure that the Project and the Forest
24 Plan will not result in the destruction or adverse modification of critical bull trout habitat.
25
26

VI. FACTUAL ALLEGATIONS

19. The Regional Forester for Region 4 of the Forest Service (the Intermountain Region) approved a Revised Land and Resource Management Plan for the Payette National Forest on July 25, 2003. That plan, which is the Payette National Forest Land and Resource Management Plan (hereinafter referred to as the "Forest Plan"), is the current plan that is still in effect today for management of the Payette National Forest.

20. The Forest Plan guides natural resource management activities on lands administered by the Payette National Forest. It provides forest-wide long-term management direction in the form of goals, objectives, standards, and guidelines designed to guide land and endangered species management activities in the Payette National Forest.

21. The original Land and Resource Management Plan for the Payette National Forest was adopted in 1988.

22. In 1995, the original Land and Resource Management Plan for the Payette National Forest was amended to incorporate the Interim Strategy for Managing Fish Producing Watersheds ("INFISH") and the Pacific Anadromous Fish Strategy ("PACFISH"). INFISH constitutes a broad reaching aquatic habitat conservation strategy for the northwestern United States. PACFISH is a comprehensive land management strategy for anadromous fish producing watersheds on additional federal lands including federal lands in Idaho.

23. The Forest Service entered into consultation with the Fish and Wildlife Service pursuant to the ESA, 16 U.S.C. § 1536(2), regarding the effect of these INFISH/PACFISH amendment to the Forest Plan on ESA listed species.

24. The Fish and Wildlife Service issued a Biological Opinion in 1998 on the INFISH/PACFISH amendments. Among other things, the Biological Opinion analyzed the effects

1 to bull trout of the Forest Plan amendments in the States of Washington, Oregon, Idaho, Montana,
2 and portions of California.

3 25. That Biological Opinion concluded that because, at that time, no critical habitat had
4 been designated by the Fish and Wildlife Service for bull trout, no bull trout critical habitat would be
5 affected.
6

7 26. On September 30, 2010, the Fish and Wildlife Service designated critical habitat for
8 bull trout throughout their U.S. range. Approximately 18,795 miles of streams and 488,252 acres of
9 lakes and reservoirs in Idaho, Oregon, Washington, Montana, and Nevada were designated as
10 critical habitat for the wide ranging fish. This included the designation of bull trout critical habitat in
11 the Payette National Forest.
12

13 27. Following the designation of bull trout critical habitat, the defendants did not
14 reinitiate and have never reinitiated ESA consultation for the Forest Plan.

15 28. In September 2014, defendant Keith Lannom issued a Final Record of Decision
16 approving the Lost Creek-Boulder Creek Landscape Restoration Project (the "Project"), which will
17 allow, among other things, commercial logging of approximately 22,100 acres and non-commercial
18 logging of approximately 17,700 acres in the New Meadows Ranger District of the Payette National
19 Forest.
20

21 29. The Project encompasses approximately 80,000 acres on the New Meadows Ranger
22 District of the Payette National Forest. The Project area is located approximately ten miles north and
23 west of New Meadows, Idaho in Boulder Creek, a tributary to the Little Salmon, and in headwaters
24 of the Weiser River and the West Fork of the Weiser River.
25
26

32. Portions of the bull trout critical habitat that were designated in September, 2010 will be affected by the project and the Forest Plan.

VIOLATION OF THE ENDANGERED SPECIES ACT

34. To ensure that there is no adverse modification of critical habitat, the ESA requires the Fish and Wildlife Service to consult with the appropriate federal agency on actions that may affect a listed species or its critical habitat. 16 U.S.C. § 1536 (a)(2), 50 C.F.R. § 402.14.

36. The Forest Service's decision to approve the Project violates the ESA because the Forest Service did not reinitiate ESA consultation on the 2010 bull trout critical habitat designation before making that decision. The defendants violated ESA § 7(d) and its implementing regulations, 36 C.F.R. § 219, *et seq.*, when they failed to consult with the U.S. Fish and Wildlife Service to

1 ensure that the Project is not likely to result in the destruction or adverse modification of critical bull
2 habitat.

3 37. The agencies also violated the ESA by failing to reinitiate consultation on the
4 INFISH/ PACFISH management strategies, the amendments that adopted them into the Forest Plan,
5 and the Forest Plan itself, which contains management strategies for bull trout habitat.
6

7 VIII. PRAYER FOR RELIEF

8 Plaintiffs respectfully request that the Court grant the following relief:

9 A. Order, declare, and adjudge that the defendants have violated the Endangered
10 Species Act as set forth above;

11 B. An order enjoining the defendants from implementation of the Project;

12 C. An order requiring that the defendant agencies reinitiate consultation under the ESA
13 as described above;
14

15 D. An order enjoining the defendants from awarding or consummating any timber sales
16 in the Payette National Forest until it completes consultation under the ESA as described above;

17 E. Award the plaintiffs their costs, litigation expenses, expert witness fees, and
18 reasonable attorneys' fees associated with this litigation pursuant to the Endangered Species Act, the
19 Equal Access to Justice Act, and all other applicable authorities; and
20

21 F. Grant the plaintiffs any such further relief as may be just, proper, and equitable.
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1 Dated this 4th day of June, 2015.

2 Respectfully submitted,

3 BRICKLIN & NEWMAN, LLP

4 /s/ David A. Bricklin, ISB #8565
5 Attorneys for Alliance for the Wild Rockies,
6 Idaho Sporting Congress, and
7 Native Ecosystems Alliance
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ALLIANCE FOR THE WILD ROCKIES, IDAHO SPORTING CONGRESS, and NATIVE ECOSYSTEMS ALLIANCE

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David B. Bricklin, Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303, Seattle, WA 98154
(206) 264-8600

DEFENDANTS

UNITED STATES FOREST SERVICE; KEITH LANNON, Forest Supervisor for Payette National Forest; NORA RASURE, Regional Forester for Region 4 for the U.S. Forest Service

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
16 U.S.C. 1540(g)(4)

Brief description of cause:
Violation of the Endangered Species Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

06/04/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ David A. Bricklin

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

for the

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)
)
)
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)
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)
)

V.

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

for the

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

V.

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

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Server's signature

Printed name and title

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Additional information regarding attempted service, etc:

for the

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

V.

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

____ District of _____

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

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 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: